

PROFESSIONAL/PERSONAL SERVICES CONTRACT

CONTRACT # 99-05-LN-9221

This Contract, entered into by and between the Indiana Family and Social Services Administration, Division of Family and Children, an agency of the State of Indiana (hereinafter referred to as "State") and Deloitte Consulting LLP (hereinafter referred to as "Contractor"), is executed pursuant to the terms and conditions set forth herein. In consideration of those mutual undertakings and covenants, the parties agree as follows:

1. Duties of Contractor

The Contractor in consideration of the terms and conditions contained herein pertaining to the payment for the provision of professional services for enhancement, maintenance, support and modification services for the Indiana Client Eligibility System (ICES), agrees to provide the services ("Services") pursuant to this Contract as set out in RFP #2-86, the subsequent Contractor's Response to RFP #2-86 Section 2.4, and further modified as stated below:

- The Contractor may propose, and the State may agree to use, any management procedures, processes, or tools which do not materially alter the delivery of services required under RFP #2-86 or proposed by the Contractor, as amended by this Contract. Agreement to such use shall be by written consent of the State's and Contractor's respective project managers and shall not require a formal amendment to the Contract.

The parties agree that the Contractor shall meet the service levels agreements ("SLAs") stated herein in performance of the Services required under this Contract. The Contractor shall perform, as directed by the State, three types of Services:

- Application development and testing services;
- Application maintenance and support services; and
- Operational Support services.

The parties further agree that the failure of the Contractor to meet an SLA as a result of circumstances beyond the Contractor's control ("Other Circumstances") will not be considered an SLA failure for which the Contractor will be held accountable or for which SLA adjustments to remuneration may be claimed by the State in accordance with the provisions of this Contract ("SLA Adjustment"). Other Circumstances may include, but are not limited to:

- Telecommunication problems;
- Hardware, modem or peripheral problems;
- Telephone Company problems;

- ABENDS caused by bad data created by ICES programs not previously modified by the Contractor or bad data entered by the user via an allowable data entry method;
- Failure of code that is performing according to a specification or change documentation previously approved by the State;
- Failure of the Systems or any component thereof resulting from code not developed or modified by Contractor (unless the failure of the code not modified by Contractor is caused by a change implemented by the Contractor)
- Schedule conflicts due to month end and mass change processing;
- Hardware and software (other than the ICES application) problems;
- Host/Mainframe problems;
- Long-Running batch processing excluding those created by the Contractor through poor or inefficient data base access techniques or programming errors;
- Power outages;
- Any situation where involvement or action from a State agency or any organization other than the Contractor is required to resolve the problem;
- At the State's request, the Systems are not made available to all users;
- Force Majeure as defined in Section 21 of the Contract; and
- Any other event outside of the Contractor's direct control that would restrict availability of project facilities or key resources.

In addition, the parties agree that an SLA Adjustment to remuneration shall be made by the State under only one SLA per each incident of unavailability or failure to meet stated timeframes.

A. Service Level Agreements

The Contractor shall appropriately and properly track and report Contractor compliance with the SLAs described below, critical or otherwise, in accordance with and in order to perform the requirements of this Contract.

1. SLA Definitions

a. System Availability

System Availability means that the online ICES Application is available on the State mainframe at the start of each Business Day. A Business Day is defined as 7:00 A.M. to 7:00 P.M. Indianapolis time, Monday through Friday and 7:00 A.M. to 1:00 P.M. on Saturday unless specified in the ICES calendar. (See Supplement 1, System Availability)

If System Availability, excluding the unavailability of the Systems caused by Other Circumstances is below 100% of a Business Day as defined above and the lack of availability is due to a factor for which Contractor is responsible, a failure to meet an SLA will be noted and the State may assess an SLA Adjustment to Contractor remuneration as specified in the "Service Level Adjustments to Remuneration" section, below.

b. Report Delivery

Report Delivery measures the timely availability of specific generated output. Output included under this service includes: Daily ICES reports and Monthly ICES reports.

Daily ICES reports must be available via COGNOS by 9:00 A.M. each business day.

Monthly ICES reports must be available via COGNOS by 9:00 A.M. the first business day following month end.

If the Contractor fails to deliver electronically the Reports described above, in accordance with the timing per the table as defined above, and the failure does not result from Other Circumstances, but is instead due to a factor for which the Contractor is responsible, a service failure will be noted and the State may assess an SLA Adjustment to remuneration as specified in the "Service Level Adjustments to Remuneration" section, below.

c. Correction of Production Application Errors

Correction of Production Application Errors measures the time required to correct critical failure of online or batch production application programs that have been migrated. For purposes of this SLA, Critical is defined as system wide inability to perform application registration, application interview, standard filing unit designations, eligibility determinations or authorizations; or batch failures that prevent benefit issuance or timely notice creation. The Contractor, once notified of such failure must analyze and correct the failing application program within 4 hours. Completion of this service is when the application program is readied, the error no longer occurs, and the state agrees with the resolution.

The Contractor will not be responsible under this SLA for failing to meet the applicable SLA correction time frame, as set forth above, if the failure to resolve the reported error within correction time frames was caused by any Other Circumstances as defined above otherwise the State may assess an SLA Adjustment to remuneration as specified in the "Service Level Adjustments to Remuneration" section, below.

d. Management of Program Change Requests (PCRs):

The number of Contractor assigned maintenance PCRs not yet in Acceptance Test is not to exceed 250 at any one time. Maintenance PCR is defined as a request for a software solution to existing Production program code. Maintenance software solutions do not include new functionality or enhancements to existing programs. The PCRs that the Contractor will be responsible to correct will be determined by the State

If the number of assigned maintenance PCRs ever exceeds 250, the State may assess an SLA Adjustment to remuneration as specified in the "Service Level Adjustments to Remuneration" section, below.

B. Service Level Reporting

The Contractor shall provide monthly SLA Compliance and Exception Reports to the State by the 15th calendar day of the following month. The Contractor shall transmit the SLA reports in the format upon which the State and the Contractor mutually agree.

C. Service Level Credit Pool Accumulation

The Contractor will accumulate a credit pool that can be used to offset any future SLA violation (the "SLA Credit Pool"). On the first day of performance of the Services, the State will establish an SLA Credit pool equal to the existing Credit Pool balance for the Contractor on September 30th, 2004 (the "Initial Deposit"). To this amount shall be added, in any month in which there were no failures to meet an SLA, an amount equal to one percent (1%) of that month's gross invoice. The SLA Credit Pool shall be utilized by the Contractor to offset SLA Adjustments to remuneration resulting from SLA failures. Credits from the Initial Deposit will be used first. If the Initial Deposit is not depleted at the end of six months from the start of paid services under this Contract, any remaining credits from the Initial Deposit shall be deducted from the SLA Credit Pool, and the Contractor shall rely only on credits built up via the monthly deposits. The SLA Credit Pool shall be used only as an offset to SLA Adjustments to remuneration and does not have any cash value.

D. SLA Adjustments to Remuneration

Remuneration to the Contractor shall be adjusted according to the degree an SLA, as described above, is not met by Contractor performance, as further described below. Should an SLA stated in this Contract conflict with a Service Level Agreement stated in the RFP #2-86, the SLA stated in this Contract prevails.

SLA Adjustments to remuneration will be made according to the following schedule. As stated above, SLA Adjustments shall first be offset against the SLA Credit Pool. If and to the extent that an SLA Adjustment exceeds the total amount of the SLA Credit Pool, the parties will use good faith efforts to cause the SLA Adjustment to be credited on the next monthly invoice upon which it is practical and no later than two billing cycles.

SLA Adjustments will be made according to the following:

Service Area	Service Failure	Adjustment
System	System availability less	The downward adjustment is 2%

Availability	than 100% of the Business Day as defined above in Section 1.A.1.a., excluding time during which the Systems were unavailable as a result of Other Circumstances. (<u>an "Occurrence"</u>)	of the Contractor's invoice for that month for the first instance of downtime in the reporting month. Additional instances will result in a downward adjustment of 1% each. The total downward adjustment will be capped at 5%. However, if an SLA Adjustment is assessed under this SLA, the value of the SLA Credit Pool may be used by the Contractor to offset the downward adjustment of remuneration.
Report Delivery	Failure of Contractor to provide High Priority Output as defined in Section 1.A.1.b. above, other than as a result of Other Circumstances (<u>an "Occurrence"</u>).	Downward adjustment of \$100.00 per Occurrence. However, if an SLA Adjustment is assessed under this SLA, the value of the SLA Credit Pool may be used by the Contractor to offset the downward adjustment of remuneration.
Correction of Critical Production Application Errors	Failure of Contractor to correct critical production application errors as defined in Section 1.A.1.c.ii. above, other than as a result of Other Circumstances. (<u>an "Occurrence"</u>).	Downward adjustment of \$250.00 per Occurrence. However, if an SLA is assessed under this SLA, the value of the SLA Credit Pool may be used by the Contractor to offset the downward adjustment—of remuneration.
Management of PCRs	Failure of Contractor to manage assigned maintenance PCRs as defined in Section 1.A.1.d above, other than as a result of Other Circumstances (<u>an "Occurrence"</u>).	Downward adjustment of the amount of Contractors cost to remedy the PCRs over 250. However, if an SLA Adjustment is assessed under this SLA, the value of the SLA Credit Pool may be used by the Contractor to offset the downward adjustment of remuneration.

E. Review of Service Level Agreements

The State or Contractor may, at any time, upon thirty (30) days prior written notice to the other, initiate negotiation to review and modify an SLA. Both parties shall implement modifications to SLAs upon which the State and the Contractor mutually agree, within an acceptable timeframe, and will provide

adjustments or amendments to the SLA reporting as required. The Contractor shall not unreasonably withhold agreement regarding changes to an SLA proposed by the State to the extent that the Contractor agrees that such changes will not materially increase the resources, effort or time necessary to perform the Services as required by this Contract, including the amended SLA requirement.

2. Consideration

The Contractor will be paid for Services rendered based on hours worked at the following Contractor hourly rates. The hourly rates set forth below include travel and other related out of pocket expenses for the performance of Services as set forth in this contract as stated above in Section 1. The State's travel policies and procedures as set forth in Section 48 shall apply if and only to the extent Contractor invoices separately for travel expenses. Both parties agree that the Contractor shall be responsible, in its discretion, to determine the mix of labor categories/resources to utilize to perform the Services as required under this Contract.

Position (Title)	Rate Per Hour for Contract period 10/1/04 thru 9/30/05	Rate Per Hour for Contract period 10/01/05 thru 9/30/06
Project Manager	\$155	\$164.11
Deputy Project Manager	\$110	\$116.46
Senior Systems Analyst	\$ 95	\$100.58
Data Base Analyst	\$ 90	\$ 95.29
Sr. Programmer Analyst	\$ 82	\$ 86.82
Programmer Analyst	\$ 64	\$ 67.76
Production Control Analyst	\$ 56	\$ 59.29
Migration Analyst	\$ 43	\$ 45.52
Tester Analyst	\$ 43	\$ 45.52

The total amount of this Contract shall not exceed Six Million Four Hundred Eighty Four Thousand Four Hundred Forty Dollars (\$6,484,440.00) for the period beginning October 1, 2004 and ending September 30, 2005. The total amount of this Contract shall not exceed Six Million Eight Hundred Sixty Five Thousand Nine Hundred Seventeen Dollars (\$6,865,917.00) for the subsequent Contract year beginning October 1, 2005 and ending September 30, 2006. The total remuneration of this Contract shall not exceed Thirteen Million Three Hundred Fifty Thousand Three Hundred Fifty Seven Dollars (\$13,350,357.00) for the two year term of this Contract.

3. Term

This Contract shall be effective for a term period of two (2) years. It shall commence on October 1, 2004 (the "Commencement Date") and shall terminate on September

30, 2006. The total Contract term of this Contract shall not exceed a total of two (2) years

4. Access to Records

The Contractor and its subcontractors, if any, shall maintain all books, documents, papers, accounting records and other evidence directly pertaining to all labor hours charged to and services provided under this Contract. They shall make such materials available at their respective offices, following reasonable notice by the State, at all reasonable times during this Contract term, and for three (3) years from the date of final payment under this Contract, for inspection by the State or, if mutually agreed to by the State and the Contractor, by any authorized representative of state government. Copies thereof shall be furnished at no cost to the State if requested.

5. Assignment, Subcontracting, Background Checks and Bonding

- A. The Contractor shall not assign or subcontract the whole or any part of this Contract without the State's prior written consent; provided, however, the Contractor may assign this Contract, without the prior written consent of the State, to any successor entity (including an entity that has acquired all or substantially all of the Contractor's assets). Subject to applicable laws and confidentiality requirements applicable to the Contractor, the Contractor shall provide written notice to the State regarding assignment of the Contract pursuant to the preceding sentence. The Contractor may assign its right to receive payments to such third parties as the Contractor may desire without the prior written consent of the State, provided that Contractor gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Contract and shall not be made to more than one party.
- B. The Contractor must obtain the approval of the State before subcontracting all or any portion of this Contract, other than those subcontractors listed in the Contractor's response to RFP #2-86. This limitation shall not apply to the purchase of standard commercial supplies or raw materials. If subcontractors are used, all subcontracts and amendments thereto must be available for State inspection at all times.
- C. If subcontractors are used, the Contractor shall incorporate all relevant Contract terms in each subcontractor agreement the Contractor enters into for the provision of services under this Contract. In any instance, however, the Contractor remains responsible for Contractor and all its subcontractor performance of Contract Services and requirements, compliance with the terms and conditions of this Contract, and compliance with the requirements of Federal and State equal opportunity and affirmative action statutes and other applicable rules or regulations.

D. Background Checks

Contractor will be required at their expense to submit to the State for review and approval, full criminal background checks for every resource assigned to this Contract.

E. Performance Bond

In accordance with Section 1.27 of the State's solicitation, Contractor shall provide a performance bond in the amount of five million dollars (\$5,000,000) within ten (10) calendar days after the execution of the Contract. If the State terminates this Contract pursuant to Section 46 below for the material breach of a material provision hereof as determined by a final non-appealable order of a court of competent jurisdiction, the State may claim against the performance bond to the extent of its actual damages directly and proximately attributable to such breach.

6. Audits

Contractor acknowledges that it may be required to submit to an audit of funds paid through this Contract. Any such audit shall be conducted in accordance with IC 5-11-1, and audit guidelines specified by the State.

7. Authority to Bind Contractor

Notwithstanding anything in this Contract to the contrary, the signatory for the Contractor represents that he/she has been duly authorized to execute contracts on behalf of the Contractor and has obtained all necessary or applicable approvals from the home office of the Contractor to make this Contract fully binding upon the Contractor when his/her signature is affixed, and this Contract is not subject to further acceptance by Contractor when accepted by the State of Indiana.

8. Changes in Work

In the event the State requires a major or material change in the scope, character or complexity of the work after the work has begun, adjustments in compensation to the Contractor shall be mutually agreed to by the State and the Contractor. The Contractor shall not commence any additional work or change the scope of the work until authorized in writing by the State. If the Contractor believes that the State has effected or may effect a change in the Contract that has not been identified as such in writing, the Contractor shall notify the State setting forth a description of the work that has been or may be changed. Thereafter, the State and the Contractor shall work in good faith regarding the changed work or work to be changed and shall mutually agree upon the scope of the change and an equitable adjustment to the price and schedule, if price and schedule have been or will be affected. If any change or amendment to state or federal statute or the promulgation of any rules or regulations after the execution of this Contract, as described in Section 9 below, causes a change in the work, the parties may mutually agree upon the scope of the change and an equitable adjustment in accordance with this Section 8.

9. Compliance with Laws

The Contractor shall comply with all applicable federal, state and local laws, rules, regulations and ordinances incorporated by reference in this Contract. The enactment or amendment of any applicable state or federal statute or the promulgation of any

rules or regulations thereunder after execution of this Contract shall be reviewed by the State and the Contractor to determine whether the provisions of this Contract require formal modification.

10. Condition of Payment

All Services provided by the Contractor under this Contract must be performed in material compliance with Contract requirements and in accordance with all applicable federal, state, local laws, ordinances, rules, and regulations. The Contractor will not receive payment for Services not in compliance with Contract requirements. Withholding of payment by the State pursuant to the preceding sentence shall be considered a Dispute under Section 18 below. In the event of a termination or cancellation of this Contract for any reason, the State shall pay Contractor for all Services performed and Work Product, as that term is defined in Section 35 below, provided prior to the date of termination, and that are in material compliance with the requirements of this Contract. In the event of a termination for convenience and, to the extent of available funds under the Contract, the State shall reimburse the Contractor for all mutually agreed to and reasonable wind-down costs such as early termination costs for leases.

11. Confidentiality of Data, Property Rights in Work Product, and Copyright Prohibition

A. Subject to Section 11.B. and 11.C. upon full and final payment by the State for Work Product delivered hereunder, the Contractor agrees that such Work Product, as that term is defined in Section 35 below, shall become the property of the State. The Contractor shall take such action as is necessary under law to preserve such property rights in and to the State and, to the extent that confidential information of the State ("State Confidential Information") is incorporated into such Work Product, to protect the confidential nature of such State Confidential Information in accordance with the requirements of this Section and Section 12 below. Unless otherwise mutually agreed by the parties, the Contractor hereby specifically waives and/or releases to the State any cognizable property right of the Contractor to copyright, license, patent or otherwise use of such Work Product, except to the extent necessary for the performance of this Contract and subcontracts in support of this Contract and except with regard to the license granted by the State to the Contractor to utilize Work Product in support of other state and local governmental agencies. To this end, the State grants the Contractor a perpetual, fully paid up, royalty free, irrevocable license to reproduce, modify, create derivative works, sublicense, display and perform Work Product in connection with the performance of contracts with other state and local governmental agencies. Contractor shall not resell or otherwise charge a fee, or receive any other compensation for use of Work Product in its original form. The State shall retain all right, title and interest in and does not grant a license to Contractor for any preexisting, proprietary or independently developed State tools, materials, or information.

B. To the extent that Contractor uses any of its pre-existing, proprietary or independently developed tools, materials or information ("Contractor Information"), Contractor shall retain all right, title and interest in and to such Contractor Information, and except for the license expressly granted in this section, the State shall acquire no right, title or interest in or to such Contractor Information. Upon full and final payment by the State hereunder with regard to each Work Product, Contractor hereby grants to the State a non-exclusive, non-transferable, perpetual, fully paid-up license to use, execute, reproduce and internally distribute copies of any Contractor Information delivered in connection with such Work Product provided hereunder, solely for the State's internal business purposes and solely in connection with use of such Work Product.

C. To the extent that, in connection with the performance of this Contract, the State comes into possession of any proprietary or confidential information of the Contractor ("Contractor Confidential Information"), the State agrees to use Contractor Confidential Information solely for the purpose of performing this Contract, and to the maximum extent permitted under law, to refrain from disclosing such Contractor Confidential Information to any third party without the Contractor's written consent. State Confidential Information, as described above in Section 11.A and in Section 12 below and Contractor Confidential Information as described in this Section 11.C. are hereinafter collectively referred to as "Confidential Information." Confidential Information shall not include information which: (i) shall have otherwise become publicly available other than as a result of disclosure by the receiving party in breach of this Contract; (ii) is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by any law, rule or regulation, or by subpoena, summons or any other administrative or legal process, or by applicable regulatory or professional standards; (iii) was disclosed to the receiving party on a non-confidential basis from a source other than the disclosing party, which the receiving party believes is not prohibited from disclosing such information as a result of an obligation in favor of the disclosing party; (iv) is developed by the receiving party independently of, or was known by the receiving party prior to, any disclosure of such information made by the disclosing party, or (v) is disclosed with the written consent of the disclosing party.

12. Confidentiality of State Information.

The Contractor understands and agrees that data, materials, and information disclosed to Contractor may contain State Confidential Information, as that term is defined above. Therefore, subject to Section 11.C above, the Contractor promises and assures that State Confidential Information gathered, incorporated into other materials or disclosed to the Contractor for the purpose of this Contract, will not be disclosed to others or discussed with third parties without the prior written consent of the State.

13. RECORDS, REPORTS, INSPECTIONS AND AUDITS

Deleted by Agreement of the Parties

14. Conflict of Interest

A. As used in this section:

"Immediate family" means the spouse and the unemancipated children of an individual.

"Interested party," means:

1. The individual executing this contract;
2. An individual who has an interest of three percent (3%) or more of Contractor, if Contractor is not an individual; or
3. Any member of the immediate family of an individual specified under subdivision 1 or 2.

"Department" means the Indiana Department of Administration.

"Commission" means the State Ethics Commission.

- B. The Department may cancel this Contract without recourse by Contractor if any interested party is an employee of the State of Indiana.
- C. The Department will not exercise its right of cancellation under section B above if the Contractor gives the Department an opinion by the Commission indicating that the existence of this Contract and the employment by the State of Indiana of the interested party does not violate any statute or rule relating to ethical conduct of state employees. The Department may take action, including cancellation of this Contract consistent with an opinion of the Commission obtained under this section.
- D. Contractor has an affirmative obligation under this Contract to disclose to the Department when an interested party is or becomes an employee of the State of Indiana. The obligation under this section extends only to those facts that Contractor knows or reasonably could know.

15. Continuity of Services

- A. The Contractor recognizes that the Service(s) to be performed under this Contract are vital to the State and must be continued without interruption and that, upon Termination for Convenience as set forth in Section 45, or Contract expiration, a successor, either the State or another contractor, may continue them. Upon written notice from the State, the Contractor agrees to:
1. Furnish phase-in training, and
 2. Exercise appropriate, suitable and commercially reasonable efforts and cooperation to effect an orderly and efficient transition to a successor.
- B. Upon written notice from the State, the Contractor shall:
1. Furnish phase-in, phase-out services for up to sixty (60) days after this Contract expires, and
 2. Negotiate in good faith a plan with a successor to determine the nature and extent of phase-in, phase-out services required.

The plan shall specify a training program and a date for transferring responsibilities for each division of work described in the plan, and shall be subject to the State's approval. The Contractor shall provide sufficient experienced personnel during the phase-in, phase-out period to facilitate the maintenance of the Services called for by this Contract at the required level of proficiency.

- C. At contract expiration or termination for convenience as set forth in Section 45 and upon written notice from the State, the Contractor shall, on a time-and-materials basis at rates to be mutually agreed upon, allow as many personnel as practicable to remain on the job to perform the Services as set forth in Section 15.A, and 15.B. above and this Section 15.C. in order to help the successor maintain the continuity and consistency of the Services required by this Contract.
- D. The Contractor shall be reimbursed for all reasonable phase-in, phase-out fees and expenses mutually agreed upon by State and Contractor (i.e., fees and expenses incurred within the agreed period after Contract expiration that result from phase-in, phase-out operations).
- E. The State may elect to permanently hire Contractor personnel into vacant State positions so long as the State maintains during the Contract term, the minimum FTE requirement stated in Section 2 above. The Contractor will acknowledge and agree that after a period of six months of employment in connection with the Services performed under this Contract, a Contractor employee may be approached to seek employment with the State without cost to the State.

16. Debarment and Suspension

Contractor certifies, by entering into this Contract, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Contract by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this Contract means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of Contractor. The Contractor also further certifies that it has verified the suspension and debarment status for all sub-contractors receiving funds under this Contract and is solely responsible for any paybacks and or penalties that might arise from non-compliance.

17. Default by State

If the State, sixty (60) days after receipt of written notice, fails to correct or cure any breach of this Contract, then the Contractor may cancel and terminate this Contract and collect all monies due up to and including the date of termination.

18. Disputes

- A. Should any disputes arise with respect to this Contract, Contractor and the State agree to act immediately to resolve such disputes.

B. The Contractor agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Contract that are not affected by the dispute, except in the event of a failure by the State to make payment in accordance with the provisions of this Contract. Should the Contractor fail to continue to perform its responsibilities regarding all non-disputed work in accordance with the preceding sentence, without delay, any additional costs incurred by the State, subject to Section 57 below, or the Contractor as a result of such failure to proceed shall be borne by the Contractor, and the Contractor shall make no claim against the State for such costs. If the State and the Contractor cannot resolve a dispute within ten (10) working days following notification in writing by either party of the existence of a dispute, then the following procedure shall apply:

The parties agree to resolve such matters through submission of their dispute to the Commissioner of the Indiana Department of Administration. The Commissioner shall reduce a decision to writing and mail or otherwise furnish a copy thereof to the Contractor and the State within ten (10) working days after presentation of such dispute for action. The Commissioner's decision shall be final and conclusive unless either party mails or otherwise furnishes to the Commissioner, within ten (10) working days after receipt of the Commissioner's decision, a written appeal. Within ten (10) working days of receipt by the Commissioner of a written request for appeal, the decision may be reconsidered. Following such reconsideration, or if no reconsideration is provided within ten (10) working days, either party may submit the dispute to an Indiana court of competent jurisdiction. In such an event, each party hereby irrevocably waives, to the fullest extent permitted by law, all rights to a trial by jury.

The Contractor may bring suit to collect overdue amounts not in dispute without following the disputes procedure contained herein. The rights and remedies available to the parties pursuant to Section 17 above and Section 46 below are in addition to all other rights and remedies available to the parties under law or equity or under this Contract.

19. Drug-Free Workplace Certification.

The Contractor hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Contractor will give written notice to the State within ten (10) days after receiving actual notice that an employee of the Contractor performing Services has been convicted of a criminal drug violation occurring in the contractor's workplace.

False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of this Contract and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total contract amount set forth in this Contract is in excess of \$25,000.00, Contractor hereby further agrees that

this Contract is expressly subject to the terms, conditions, and representations of the following certification:

This certification is required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana. Pursuant to its delegated authority, the Indiana Department of Administration is requiring the inclusion of this certification in all contracts and grants from the State of Indiana in excess of \$25,000.00. No award of a contract shall be made, and no contract, purchase order or agreement, the total amount of which exceeds \$25,000.00, shall be valid, unless and until this certification has been fully executed by the Contractor and made a part of the contract or agreement as part of the contract documents.

The Contractor certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Contractor's workplace, and specifying the actions that will be taken against employees for violations of such prohibition;
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the Contractor's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace;
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the Contractor of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;
- D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

20. Employment Option

If the State determines that it would be in the State's best interest to hire an employee of the Contractor, the Contractor will release the selected employee from any non-compete agreements that may be in effect to the extent necessary to permit the employee to accept employment by the State. This release will be at no cost to the State or the employee.

21. Force Majeure.

In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies or other causes beyond the reasonable control of and not the fault of the affected party (hereinafter referred to as a "Force Majeure Event"), the party who has been so affected shall immediately give notice to the other party and shall do everything reasonably possible to resume performance. Upon receipt of such notice, all obligations under this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the party whose ability to perform has not been so affected may, by giving written notice, terminate this Contract.

22. Funding Cancellation

When the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Contract, this Contract shall be cancelled. A determination by the Budget Director that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

23. Governing Laws

This Contract shall be construed in accordance with and governed by the laws of the State of Indiana and suit, if any, must be brought in the State of Indiana.

24. Indemnification

Contractor agrees to indemnify, defend, and hold harmless the State of Indiana and its agents, officials, and employees from all claims and suits including court costs, reasonable attorney's fees, and other expenses, in each case solely for third party claims arising from bodily injury, death or damage to real or tangible personal property to the extent directly and proximately caused by the gross negligence or willful misconduct of the Contractor in the performance of this Contract; provided, however, that if there also is fault on the part of the State or any individual, entity or governmental body indemnified hereunder or any individual, entity or governmental body acting on the State's behalf, the foregoing indemnification under this Section 24 shall be on a comparative fault basis. The State shall **not** provide such indemnification to the Contractor. As a condition to the foregoing indemnity obligation, the State shall provide the Contractor with prompt notice of any claim for which indemnification may be sought hereunder and shall cooperate with the indemnifying

party in connection with any such claim. The Contractor shall be entitled to control the handling of any such claim and to defend or settle any such claim, in its sole discretion, with counsel of its own choosing; provided, however, that, in the case of any such settlement, the Contractor shall obtain written release of all liability of the State, in form and substance reasonably acceptable to the State.

25. Independent Contractor

Both parties hereto, in the performance of this Contract, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property arising out of the acts or omissions of the agents, employees or subcontractors of the other party.

The Contractor shall be responsible for providing all necessary unemployment and workers' compensation insurance for the Contractor's employees.

26. Information Technology Accessibility

All contractors supplying information technology related products and services to the State of Indiana must comply with all ITOC policies and standards. These policies and standards can be found at http://www.in.gov/itoc/html_site/architecture/poli.html and http://www.in.gov/itoc/html_site/architecture/stan.html. Any deviation from the published standards and policies must be approved by ITOC and be supported by a written waiver.

The Contractor acknowledges and agrees that all hardware, software and services provided to or purchased by the State must be compatible with the principles and goals contained in the electronic and information technology accessibility standards adopted by the Architectural and Transportation Barriers Compliance Board under Section 508 of the Federal Rehabilitation Act of 1973 (29 U.S.C. 749d), as amended, and adopted by the State of Indiana Information Technology Oversight Commission pursuant to IC 4-23-16-12.

27. Insurance

a) The Contractor shall secure and keep in force during the term of this Contract, the following insurance coverages, covering the Contractor for any and all claims of any nature which may in any manner arise out of or result from this Contract, subject to the terms and conditions of the policies:

- 1) Commercial general liability, including contractual coverage, and products or completed operations coverage (if applicable), with minimum liability limits of \$500,000 per person and \$1,000,000 per occurrence unless additional coverage is required by the State.
- 2) Professional errors and omissions, with minimum liability limits of \$1,000,000 per claim and in the aggregate.

- 3) Automobile liability with minimum liability limits of \$250,000 per person and \$1,000,000 per occurrence.
 - 4) Workers compensation coverage meeting all statutory requirements of IC 22-3-2. In addition, an "all states endorsement" covering claims occurring outside the State of Indiana if any of the Services provided under this Contract involve work outside the State of Indiana. The Contractor shall provide proof of such insurance coverage by tendering to the undersigned State representative, a certificate of insurance prior to the commencement of this Contract.
- b) The Contractor's insurance coverage must meet the following additional requirements:
- 1) Any deductible or self-insured retention amount or other similar obligation under the insurance policies shall be the sole obligation of the Contractor.
 - 2) The certificates of insurance required in this Contract shall include a provision that the policy may not be canceled or not renewed without the insurers endeavoring to provide thirty (30) days' prior written notice to the undersigned State representative.
 - 3) Failure to provide insurance as required in this Contract is a material breach of contract entitling the State to immediately terminate this Contract.

The Contractor shall furnish a certificate of insurance and all endorsements to the undersigned State representative prior to the commencement of this Contract.

28. Key Person(s)

- A. If both parties have designated that certain individual(s) are essential to the Services offered, the parties agree that should such individual(s) be removed by the Contractor from performance of the Services (for reasons other than death, disability, change in employment status or such person's actual request for transfer from the project) and reassigned to another project, without prior approval of the State, the State shall have the right to terminate this Contract upon thirty (30) days prior written notice.
- B. In the event that an individual designated as "key" is removed or leaves the project, subject to clause A. above, the Contractor will present to the State, within thirty (30) days, the name and qualifications of another individual who shall become a "key" person under the terms of this Contract upon approval of the State.
- C. In the event that the Contractor is an individual, that individual shall be considered a key person and, as such, essential to this Contract. Substitution of another for the Contractor shall not be permitted without express written consent of the State.
- D. Nothing in sections A and B, above shall be construed to prevent the Contractor from using the services of others to perform tasks ancillary to those tasks which directly require the expertise of the key person. Examples of such ancillary tasks include secretarial, clerical, and common labor duties. The Contractor shall, at all

times, remain responsible for the performance of all necessary tasks, whether performed by a key person or others.

Personnel assigned to the following positions in the performance of this Contract shall be considered Key Personnel:

Project Manager

Deputy Project Manager

29. Licensing Standards

The parties agree that Contractor and its employees and subcontractors shall comply in all material respects with all applicable licensing standards, certification standards, accrediting standards and any other laws, rules or regulations governing services to be provided by the Contractor pursuant to this Contract. The State shall not be required to reimburse Contractor for any services performed when Contractor or its employees or subcontractors are knowingly or purposefully not in compliance with such applicable standards, laws, rules or regulations. If licensure, certification or accreditation expires or is revoked, Contractor shall notify the State promptly and the State, at its option, may terminate this Contract for breach.

30. Merger & Modification

This Contract constitutes the entire agreement between the parties. No understandings, agreements, or representations, oral or written, not specified within this Contract will be valid provisions of this Contract. This Contract may not be modified, supplemented, or amended, in any manner, except by written agreement signed by all necessary parties.

31. Minority and Women Business Enterprise Compliance

The Contractor agrees to comply fully with the provisions of the Contractor's MBE/WBE participation plans, and agrees to comply with all Minority and Women Business Enterprise statutory and administrative code requirements and obligations, including IC 4-13-16.5 and 25 IAC 5.

The Contractor further agrees to cooperate fully with the minority and women's business enterprises division to facilitate the promotion, monitoring, and enforcement of the policies and goals of MBE/WBE program including any and all assessments, compliance reviews and audits that may be required.

32. Nondiscrimination

Pursuant to IC 22-9-1-10 and the Civil Rights Act of 1964, Contractor and its subcontractors shall not discriminate against any employee or applicant for employment in the performance of this Contract. The Contractor shall not discriminate with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin or ancestry. Breach of this covenant may be regarded as a material breach of this Contract. The Contractor's execution of this Contract also

signifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination in the provision of services based on race, color, national origin, age, sex, disability or status as a veteran.

The Contractor understands that the State is a recipient of federal funds. Pursuant to that understanding, the Contractor and its subcontractor, if any, agree that if the Contractor employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the Contractor will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The Contractor shall comply with Section 202 of Executive Order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this Contract.

33. Notice to Parties

Whenever any notice, statement or other communication is required under this Contract, it shall be sent to the following addresses, unless otherwise specifically advised.

- A. Notices to the State shall be sent to:
Chief Information Officer
Division of Technology Services
Indiana Family and Social Services Administration
402 West Washington Street, W461
Indianapolis, IN 46204

Notices to the Contractor shall be sent to:
Todd Higgins, Principal
1000 One PPG Place
Pittsburgh, PA 15222
Phone: (412) 402-5068
Fax: (412) 402-5097
Email: tohiggins@deloitte.com

- B. Payments to the Contractor shall be sent to the address designated by Form W-9 on file with the Auditor of State which is:
Deloitte Consulting LLP
P.O. Box 402901
Atlanta, GA 30384-2901

34. Order of Precedence

Any inconsistency or ambiguity in this Contract shall be resolved by giving precedence in the following order: (1) This Contract and all modifications and amendments thereto, (2) RFP#2-86 including the Questions by Vendors and Answers by the State, (3) Contractor's response to RFP# 2-86 and modifications thereto.

35. Ownership of Documents and Materials

All documents, records, programs, data, film, tape, articles, memoranda, and other materials not developed or licensed by the Contractor prior to execution of this Contract, but: (1) specifically developed for and (2) delivered or to be delivered under this Contract ("Work Product") shall be considered "work for hire" and the Contractor transfers any ownership claim to the State of Indiana and all such Work Product will become the property of the State of Indiana. Use of this Work Product, other than as set forth in Article 11 above, by the Contractor, without the prior written consent of the State, is prohibited. During the performance of this Contract, the Contractor shall be responsible for any loss of or damage to Work Product while such Work Product is in the possession of the Contractor. Any loss or damage thereto shall be restored at the Contractor's expense. Full, prompt, and unrestricted access to the Work Product of the Contractor during the term of this Contract shall be available to the State.

36. Payments

All payment obligations shall be made in arrears in accordance with Indiana law and state fiscal policies and procedures. All payments shall be due within thirty (30) days of the receipt of the invoice by the State and made to the following address:

Deloitte Consulting LLP
P.O. Box 402901
Atlanta, GA 30384-2901

37. Penalties/Interest/Attorney's Fees

The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest, or attorney's fees, except as required by Indiana law, in part, IC 5-17-5, IC 34-54-8, and IC 34-13-1.

Notwithstanding the provisions contained in IC 5-17-5, the Parties stipulate and agree that any liability resulting from the State of Indiana's failure to make prompt payment shall be based solely on the amount of funding originating from the State of Indiana and shall not be based on funding from federal or other sources.

38. Progress Reports

The Contractor shall submit progress reports to the State upon request. The report shall be oral, unless the State, upon receipt of the oral report, should deem it necessary to have it in written form. The progress reports shall serve the purpose of assuring the State that work is progressing in line with the schedule, and that completion can be reasonably assured on the scheduled date.

39. Renewal Option

Deleted by Agreement of the Parties

40. Security and Privacy of Health Information

The parties acknowledge that the Department of Health and Human Services has issued the Final Rule, as amended from time to time on the Standards for Privacy of Individually Identifiable Health Information, as required by the Administrative Simplification Section of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The parties acknowledge that the State and/or specific business units of the State may be a Covered Entity within the meaning of HIPAA. To the extent required by the provisions of HIPAA and regulations promulgated thereunder, the Contractor agrees that it will appropriately safeguard Protected Health Information, as defined by the regulations, which is made available to or obtained by the Contractor by or from the State in the course of its work under the Contract ("PHI"). The Contractor agrees to comply with applicable requirements of law relating to PHI with respect to any task or other activity it performs for the State including, (which agreements are required by the final regulations to be contractually agreed to by business associates of covered entities and are not legal requirements of business associates):

1. Not using or further disclosing PHI other than as permitted or required by this Contract or in connection with the Services contemplated hereunder or as Required by Law (as defined in HIPAA); provided, however, the Contractor may use and disclose such PHI for the proper management and administration of Contractor or to carry out its legal responsibilities;
2. Using appropriate safeguards to prevent use or disclosure of PHI other than as provided by this Contract or Required by Law;
3. Reporting to the State any use or disclosure by the Contractor, its agent, employees, subcontractors or other third parties to which Contractor has provided PHI, of PHI obtained under this Contract in a manner not provided for by this Contract or by applicable law of which the Contractor becomes aware;
4. Ensuring that any subcontractors or agents to whom the Contractor provides PHI received from, or created or received by the Contractor on behalf of the State agrees to the same restrictions, conditions and obligations applicable to such party regarding PHI;
5. Making the Contractor's internal practices, books and records related to the use of disclosure of PHI received from, or created or received by the Contractor on behalf of the State available to the Secretary of the United States Department of Health and Human Services for purposes of determining the State's compliance with applicable law. The Contractor shall promptly notify the Office upon receipt by the Contractor of any such request, and shall provide the Office with copies of any materials made available in response to such a request;
6. Making available the information required to provide an accounting of disclosures pursuant to 45 CFR 164.528 or required by Law.;

7. In accordance to procedures established by the State, to the extent that such procedures have been provided to the Contractor in writing, should the Contractor be made aware of PHI needing amending, the Contractor will notify the State and/or the appropriate State covered entity to help facilitate PHI amendments and/or incorporating any amendments to PHI held by the State in a Designated Record Set ("DRS"), in accordance with 45 CFR 164.526;
8. In accordance with procedures established by the State, to the extent that such procedures have been provided to the Contractor in writing, should the Contractor be made aware of individual(s) requesting or entitled to access of PHI, the Contractor will notify the State and/or the appropriate State covered entity to help facilitate the individual(s) request for access to PHI maintained by the State in a DRS;
9. Reporting to the State any security incident(s) (as defined 45 CFR 164.304) of which it becomes aware that relates to the divulging or improper disclosure of PHI; and
10. At the termination of this Contract, if feasible, returning or destroying all PHI obtained under this Contract that Contractor still maintains and retaining no copies of such PHI or, if it is not feasible to return or destroy such PHI (such as in the event that the retention of such PHI by Contractor is required by law, regulation, professional standards, or reasonable business practice to evidence Contractor's services), extend the protections of this Section 40 to such PHI and limit further uses and disclosures to those purposes that make the return or destruction of such PHI infeasible.

41. Severability

The invalidity of any section, subsection, clause or provision of this Contract shall not affect the validity of the remaining sections, subsections, clauses or provisions of this Contract.

42. Substantial Performance

This Contract shall be deemed to be substantially performed only when fully performed in all material respects according to its terms and conditions and any modification thereof. The State shall cooperate with the Contractor in the performance of the Services, including, without limitation providing the Contractor with reasonable facilities and timely access to data, information and personnel of the State. The State shall be responsible for the performance of its employees and agents and for the accuracy and completeness of all data and information provided to the Contractor hereunder. The parties acknowledge and agree that the Contractor's performance is dependent upon the timely and effective satisfaction of the State's responsibilities hereunder and timely decisions and approvals of the State in connection with the Services. The Contractor shall be entitled to rely on all decisions and approvals of the State in the performance of the Contract.

43. Successors and Assignees

The Contractor binds its successors, executors, administrators, and assignees to all covenants of this Contract. Except as above set forth, the Contractor shall not assign, sublet or transfer interest in this Contract without the prior written consent of the State of Indiana.

44. Taxes

The State of Indiana is exempt from state, federal, and local taxes. The State will not be responsible for any taxes levied on the Contractor as a result of this Contract.

45. Termination for Convenience

This Contract may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of Services shall be effected by delivery to the Contractor of a Termination Notice at least forty-five (45) days prior to the termination effective date, specifying the extent to which performance of Services under such termination becomes effective. In accordance with Section 10 above, the Contractor shall be compensated for Services properly rendered prior to the effective date of termination. The State will not be liable for Services performed after the effective date of termination, unless otherwise mutually agreed to by the parties. The Contractor shall be compensated for Services herein provided but in no case shall total payment made to the Contractor exceed the original Contract price nor shall any price increase be allowed on individual line items if canceled only in part prior to the original termination date.

46. Termination for Default

A. If the Contractor, thirty (30) days after receipt of written notice, fails to correct or cure any material breach of this Contract, then the State may terminate this Contract.

B. If the State terminates this Contract in whole or in part, it may acquire, under the terms and in the manner the State considers appropriate, supplies or services similar to those terminated, and the Contractor will be liable to the State for any reasonable excess costs for those supplies or services subject to the limitations set forth in Section 57 below. However, the Contractor shall continue the Services not terminated, subject to the rights of the parties as set forth in Sections 17 and 18 above.

C. The rights and remedies of the parties in this clause are in addition to any other rights and remedies provided by law or equity or under this Contract.

47. Registration with the Secretary of State of Indiana

The Contractor certifies that if it is a non-domestic entity, it is registered with the Indiana Secretary of State to do business in the State of Indiana.

48. Travel

Expenditures made by the Contractor for travel will be reimbursed by the State at the current rate paid by the State of Indiana. Travel expenses can only be reimbursed in accordance with the State Travel Policies and Procedures as specified in the current Financial Management Circular (#03-1.1). Out-of-state travel requests must be reviewed by the State for availability of funds and for appropriateness per Circular guidelines.

49. Waiver of Rights

No right conferred on either party under this Contract shall be deemed waived and no breach of this Contract excused, unless such waiver or excuse is in writing and signed by the party claimed to have waived such right.

50. Work Standards

The Contractor warrants that it will perform its responsibilities in good faith and in a professional manner. EXCEPT WITH REGARD TO THE WARRANTIES SET FORTH IN THIS SECTION 50 (WARRANTY TO PERFORM IN GOOD FAITH AND IN A PROFESSIONAL MANNER), SECTION 55 BELOW (WARRANTY WITH REGARD TO CONTRACTOR'S RIGHT TO GRANT USAGE RIGHTS TO SOFTWARE DELIVERED TO THE STATE), AND THE STATEMENT OF WORK (90 DAY WARRANTY FOR APPLICATION DEVELOPMENT), THE CONTRACTOR DISCLAIMS ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. If the State becomes dissatisfied with the work product of or the working relationship with those Contractor employees or subcontractors assigned to work on this Contract, the State may request in writing the replacement of any or all such individuals, which shall include the basis for the request, and Contractor shall grant such request.

51. State Boilerplate Affirmation Clause.

I swear or affirm under the penalties of perjury that I have not altered, modified or changed the State's Boilerplate contract clauses (as defined in the 2003 IDOA Professional Services Contract Manual) in any way except for the following clauses which are identified by name below:

4. Access to Records clause changed to add maintenance of evidence directly pertaining to all labor hours charged to and services provided.

5. Assignment clause changed to provide more subcontracting provisions and requirements.

8. Changes in Work clause changed to allow for a mutual agreement by the parties in regards to scope of work changes and subsequent adjustments to price.

10. Condition of Payment clause changed to clarify mutually agreed upon payments in the event of termination and to add clarifying language regarding withholding payment and payment for services provided.

11. Confidentiality of Data, Property Rights in Products, and Copyright Prohibition clause renamed and changed to accommodate expanded confidentiality rights, Work Product protections, and limitations.

13. Records, Reports, Inspections and Audits clause was deleted by agreement of the parties and in lieu to the pre-existing Section 6, Audit provision.

15. Continuity of Services clause revised and expanded to better accommodate termination provisions, mutually agreed upon transition costs, and clarification of employment provisions.

18. Disputes clause changed to clarify dispute language regarding payment and overdue amounts and to remove the additional arbitration step, which follows a reconsidered appeal.

20. Employment Option clause changed to allow for Contractor release of any employee non-compete agreements only to the extent necessary to provide for State employment.

24. Indemnification clause changed to provide clarification regarding indemnification in instances where the State may be comparatively at fault.

27. Insurance Clause subsection b) 2) deleted in lieu of indemnification clause Section 24.

28. Key Person(s) clause changed to require State approval upon any replacement or change of a “key” person.

29. Licensing Standards clause changed to add knowingly and purposefully language.

34. Order of Precedence clause has been revised and clarified.

35. Ownership of Documents and Materials clause changed to clarify Contractor ownership of prior developed materials from those developed specifically for, delivered, or to be delivered to the State.

36. Payments clause changed to allow for payments to be due within thirty (30) days of receipt of invoice.

42. Substantial Performance clause changed to clarify and stipulate duties, which may affect performance.

45. Termination for Convenience clause changed to allow for forty five (45) day notice requirement and to clarify payment for services performed.

46. Termination for Default clause revised and edited to clarify language and delete inapplicable supplies language in subsection C.

50. Work Standards clause changed to more explicitly state Contractor warranties and disclaimers.

52. Project Management Overview

- A. Upon request the Contractor shall provide to State ICES Project Manager an updated table of organization showing the reporting structure and responsibilities of each of the Contractor staff members.
- B. The Contractor shall also provide to State ICES Project Manager a copy of the resume of any staff member the Contractor plans to assign, prior to being assigned by the Contractor.
- C. When it is deemed by the State ICES Project Manager that the staffing level needed by the Contractor to maintain ICES is excessive, the State ICES Project Manager may request the reduction of the number of Contractor assigned staff so long as the Contractor retains the discretion to determine the appropriate mix of labor categories or skill levels to continue performance of the Services following the reduction. The Contractor will identify the specific members to be removed to the State within thirty (30) days of the written request from the Division Director or his designee that a reduction of Contractor assigned staff take place.

53. Lobbying Activities

- A. Pursuant to 31 U.S.C. §1352, and any regulations promulgated thereunder, Contractor hereby certifies that no federally appropriated funds have been paid, or will be paid, by or on behalf of Contractor, to any person to influence or attempt to influence an officer or employee of any agency, a member of Congress, in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into any of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this agreement, Contractor shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

54. Unlawful Boycott

The Contractor warrants, represents and agrees that during the time this Contract is in effect, neither it nor any affiliated company participates in or cooperates with an international boycott, as defined in 26 U.S.C. §999(b)(3) and (4) of the Internal Revenue Code of 1954, as amended.

55. Use and Ownership of Information and Documentation

- A. Reproduction of Documentation

1. For purposes of this Section 55.A.1., "Documentation" as used in the title of this section shall mean "Contractor Information," as that term is defined in Section 11 above. All Contractor Information, provided by the Contractor to the State may be reproduced by the State, in accordance with the license granted by the Contractor pursuant to Section 11 above provided that no charge is made to anyone for such reproduction. To the extent that the Contractor provides any third party copyrighted material and there is a requirement by the State to copy portions of such material, Contractor will seek permission from the copyright source at the request of the State.

B. Ownership of Materials

1. Subject to Sections 11 and 35 and the rights of the parties granted therein and in this Section 55.B., the State has the right to all Work Product, as that term is defined in Section 35 above (other than Contractor Information).
2. Subject to Sections 11 and 35 and the rights granted to the parties therein and in this Section 55.B., all property rights, including publication rights in Work Product (other than Contractor Information), shall rest with the State.
3. Subject to Sections 11 and 35 and the rights granted to the parties therein and in this Section 55.B., the Contractor may not publish or copyright any Work Product without prior approval, unless otherwise stated herein. The State shall have the right to publish, duplicate, use, and disclose all such Work Product in any manner, and for any purpose whatsoever, and may authorize others to do so.
4. "Work Product" shall have the meaning set forth in Section 35 above. "Work Product" shall not include Contractor Information, as defined in Section 11 above, or Contractor's proprietary or confidential data or any pre-existing materials.
5. Either party, in any way each deems appropriate, may use any ideas, concepts, know-how or techniques related to the subject matter of this Contract and/or developed or provided by either party or jointly developed by both parties during the course of this Contract, without an obligation of accounting. This Contract shall not preclude the Contractor from developing materials outside this Contract which are competitive, irrespective of their similarity to materials which might be delivered to State pursuant to this Contract. Nothing in this Contract shall be construed as precluding or limiting in any way the right of the Contractor to provide consulting or other services of any kind or nature whatsoever to any individual or entity as the Contractor in its sole discretion deems appropriate.
6. Notwithstanding the above and in accordance with Federal requirements, the State agrees that the Contractor will retain all ownership interests or rights to Contractor Information and to the Contractor's materials which were or are proprietary prior to the commencement of work under this Contract or developed outside the performance of the Contract.

7. The Contractor represents, assures and warrants that the Contractor either owns or has the right to grant the State usage rights to the software covered herein or accompanying the Work Product to be delivered herein.

C. Nondisclosure

1. Due to the sensitive nature of some of the data that will be provided to the Contractor, Contractor understands that from time to time during its performance for the State that the Contractor may receive State Confidential Information as that term is defined in Section 11 above. Contractor expressly agrees that it shall maintain this data in confidence and that Contractor shall not use this data for any purpose other than its performance for the State under this Contract. The Contractor further agrees to have any of its employees, agents, or representatives who may be required to work with such State Confidential Information in the performance of the Contractor's work for the State to individually comply with the confidentiality standards, including any personal screening of its personnel by the State for security purposes.

56. Infringement of Patents and Copyrights

- A. Contractor will defend the State against a third party claim that Work Product supplied hereunder infringes a US. Patent or copyright, or that the operation of the Work Product pursuant to a current release and modification level of such Work Product supplied by Contractor infringes a US. Patent. Contractor will pay resulting costs, damages and reasonable attorney's fees finally awarded provided that:
 1. The State promptly notified Contractor in writing of the claim; and
 2. Contractor has sole control of the defense and all related settlement negotiations.
- B. The State shall have the right to participate in the defense where issues of State law or policy are involved. Contractor's obligation under this Section is conditioned on the State's agreement that if the Work Product, or the operation thereof is likely to become, the subject of a third party claim, the State will permit Contractor, at its option and expense, either to procure for the State the right to continue using such Work Product or to replace or modify the same so that they become non-infringing; and if neither of the foregoing alternatives is available on terms which are reasonable in Contractor's judgment, the State will return the Work Product on written request by Contractor.
- C. The Contractor has no liability for any claim based upon the following:
 1. The combination, operation, or use of Work Product supplied hereunder with any program or other material other than or in addition to programming supplied by the Contractor;
 2. State modification of Work Product other than that directed or requested by Contractor or pursuant to this Contract, or Work Product's use in other than its specified operating environment.

3. Use by the State of a superseded or altered release or version of Work Product modified outside of the scope of this Contract;
4. Use of the Work Product by the State other than in accordance with its published specifications, if any; or
5. The infringement resulted from implementing technical specification(s) provided by the State.

D. The foregoing states the entire obligation of Contractor with respect to infringement of patents and copyrights.

57. Limitation of Liability

Each party agrees that the other party and its personnel shall not be liable for any actions, damages, claims, liabilities, costs, expenses, or losses, including total SLA Adjustments to remuneration, in any way arising out of or relating to the Services performed hereunder for an aggregate amount in excess of the fees paid by the State to the Contractor during the preceding twelve (12) month period. In no event shall either party or its personnel be liable for consequential, special, indirect, incidental, punitive or exemplary damages, costs, expenses, or losses (including, without limitation, lost profits and opportunity costs) nor shall they be liable for any claim or demand against the other party by any third party (other than third party claims for which indemnification is available hereunder). The provisions of this paragraph shall apply regardless of the form of action, damage, claim, liability, cost, expense, or loss, whether in contract, statute, tort (including, without limitation, negligence), or otherwise.

58. Ethics Compliance

The Contractor, its employees and its subcontractors shall abide by all ethical requirements that apply to persons who have a business relationship with the State, as set forth in Indiana Code § 4-2-6 et seq., the regulations promulgated thereunder, and Executive Order 04-08, dated April 27, 2004. If the Contractor is not familiar with these ethical requirements, the Contractor should refer any questions to the Indiana State Ethics Commission, or visit the Indiana State Ethics Commission website at <<< <http://www.in.gov/ethics/> >>>. If the Contractor, its employees or its subcontractors violate any applicable ethical standards, the State may, in its sole discretion, terminate this Contract for convenience immediately upon notice to the Contractor. In addition, the Contractor may be subject to penalties under Indiana Code § 4-2-6-12.

Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that he/she is the Contractor, or that he/she is the representative, agent, member or officer of the contracting party, that he/she has not, nor has any other member, employee, representative, agent or officer of the Contractor, directly or indirectly, to the best of his/her knowledge, entered into or offered to enter into any combination, collusion or agreement to receive or pay, and that he/she has not received or paid, any sum of money or other consideration for the execution of this Contract other than that which appears upon the face of this Contract.

In Witness Whereof, Contractor and the State of Indiana have, through duly authorized representatives, entered into this Contract. The parties having read and understand the foregoing terms of this Contract do by their respective signatures dated below hereby agree to the terms thereof.

Contractor:

(Where Applicable)

By: _____
Printed Name: _____
Title: _____
Date: _____

Attested By: _____

State of Indiana Agency:

By: _____
Stephen E. DeMougin
Director, Division of Family & Children
Family and Social Services Administration
Date: _____

**Information Technology Oversight
Commission**

By: _____
Michael Landwer
ITOC Chairperson
Date: _____

Department of Administration

Charles R. Martindale
Commissioner
Date: _____

State Budget Agency

Marilyn F. Schultz
Director
Date: _____

Office of the Attorney General

Stephen Carter
Attorney General
Date: _____